HAROLD B. WILLEY, Cle

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 327

MARY B. JOHNSON,

Petitioner,

vs.

JAMES N. JOHNSON.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND
and
BRIEF IN SUPPORT THEREOF

KARL F. STEINMANN,
PAUL R. KACH,
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The Daily Record Co., Baltimore 3, Md.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Mary B. Johnson, Petitioner, through her attorneys, Karl F. Steinmarn, Paul R. Kach and Mannes F. Greenberg, prays that a Writ of Certiorari be entered to review the decree of the Court of Appeals of Maryland, No. 167, October Term, 1952, entered June 12th, 1953, reversing the Order dated December 23rd, 1952, of the Circuit Court No. 2 of Baltimore City.

OPINION BELOW

Both the majority and the concurring opinion filed in the Court of Appeals of Maryland, as well as the opinion of the Chancellor of the Circuit Court No. 2 of Baltimore City, are set forth in the certified transcript of the record below (R. 43, 48, 35).

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, Section 1257 (3) U. S. C. A., to review the opinion of the Court of Appeals of Maryland filed June 12th, 1953, the mandate thereunder having been stayed by an Order of that Court (R. 54). The Petitioner claims that the Court of Appeals of Maryland, the highest Court of the State, in its opinion, refused to give full faith and credit to a decree of the Supreme Court of Florida, as required by the Federal Constitution, Article 4, Paragraph 1, and the Act of Congress passed pursuant thereto codified as Section 1738 of Title 28, U. S. C. A., and that she was denied procedural due process of law by the Court of Appeals of Maryland, as required by the 14th Amendment to the Federal Constitution.

Further supporting this Court's jurisdiction, your Petitioner would recite: Barber v. Barber, 323 U. S. 77, 89 L. Ed. 82; Sutton v. Leib, 342 U. S. 402, 96 L. Ed. 458; and Saunders v. Shaw, 244 U. S. 317, 61 L. Ed. 1163.

STATEMENT OF THE MATTER INVOLVED

On November 15th, 1948, the Circuit Court No. 2 of Baltimore City granted to the Petitioner a partial divorce and awarded to her custody of Paul B. Johnson, only child of said marriage, and awarded to her support and maintenance

of $100.00 per week and $25.00 per week for the support of the said infant child (R. 18, 19). In order to secure payment of the aforesaid awards, the Court enjoined disposition by the husband of property within Maryland (R. 18, 19). Later, by agreement of the parties, the injunction was dissolved and certain securities were deposited with the Clerk of the Court in substitution thereof (R. 22).

On March 28th, 1949, the husband filed a Bill for an absolute divorce in the Circuit Court for Dade County, State of Florida. The wife filed an Answer claiming protection of the Federal Constitution in that there was no allegation in the husband's complaint, which occurred after the Maryland decree, of any fact that had not been adjudicated in the Maryland proceeding, and that, therefore, the Maryland decree was res adjudicata both on the facts and on the provisions for support and maintenance, and further answered on the merits. (See Johnson v. Johnson, filed Feb. 13, 1952, ... Md. ...., 86 A. 2d 520.)

On January 18th, 1950, the Circuit Court for Dade County, Florida decreed:

1. That the Maryland decree was res adjudicata so far as it related to the rights of the wife to support and maintenance.

2. Divorced the husband a vinculo matrimonii from the wife (R. 14, 15).

On motion of the wife, the Circuit Court for Dade County, Florida, on the 21st of February, 1950, passed a supplemental decree (R. 16) implementing its finding of res adjudicata as follows:

> "(6) That nothing in this Decree shall be held or construed to relieve the Plaintiff in any manner from

complying with the support and maintenance provisions of that certain Decree rendered by the Circuit Court No. 2 of Baltimore City, State of Maryland, on the 15th day of November, 1948, in the case of Mary B. Johnson, Plaintiff v. James Nelson Johnson, et al, Defendants, exemplified copy of which Decree has been introduced herein as a part of Plaintiff's Exhibit No. 3."

The original decree of that Court followed in point of time (and confirmed) a prior finding of its special Master, holding:

"4. The Baltimore Maryland decree adjudicates said property rights of the parties and said payments to be made by the plaintiff, which matters are res adjudicata."

The decree of the County Court was affirmed without opinion by the Supreme Court of Florida. (Johnson v. Johnson (Fla.) 49 Southern 2nd 340.)

The wife applied in this Court for certiorari from that order on March 12th, 1951, which was denied March 3rd, 1952. (342 U. S. 941.)

The wife, on the 14th of May, 1951, filed a Petition in the Circuit Court No. 2 of Baltimore City, upon which she was granted by that Court, an order to require the husband to pay to her the costs necessary to perfect said Petition for Certiorari. The Order was reversed by the Court of Appeals of Maryland, in an opinion filed February 13th, 1952. (Johnson v. Johnson, supra, 86 A. 2nd 520.)

The opinion filed February 13th, 1952, is not an issue in this case, except as it bears upon the question of being an alleged precedent for the opinion of the Maryland Court of Appeals here sought to be reviewed.

On August 4th, 1952, the husband petitioned the Circuit Court No. 2 of Baltimore City to release certain corporate stock held by that Court to secure the payment of the support and maintenance allowed to Mary B. Johnson and of the award for support of the child provided for in the Maryland decree of November 15th, 1948, above mentioned. The husband asserted in that Petition that the Florida decree ended the relationship between the husband and wife, and hence, later in time to the Maryland decree, put an end to the Maryland decree so far as it related to the provisions for support and maintenance for Mary B. Johnson (R. 7).

The wife answered setting forth, among other things, that the Florida decree sustained the Maryland decree insofar as support was concerned and determined said decree on that point was res adjudicata in Florida, as is conclusively shown by its decree and supplemental decree above quoted, and alleged that Maryland was required to give full faith and credit to the Florida decree. The wife reserved all federal questions, both in the Lower Court and in the Court of Appeals.

The Lower Court of Maryland decided that the effect of the Florida decree was not in issue under Plaintiff's Petition as filed in this case. The husband appealed, and the Court of Appeals reversed, without a remand, on the issue of support and maintenance to the wife, holding that it was bound by its decision in the earlier case, that the Florida decree was an effort by Florida to confer jurisdiction on the Maryland Court to continue the payment of support and maintenance, which under the Maryland law could not be done.

Chief Judge Sobeloff and Judge Hammond (two of the Maryland Court's five Judges) in a concurring opinion stated that they felt required to do so on the authority of the earlier case, which case (decided before their membership on the Court) they stated they thought was improperly decided. This Petition requests a review by this Court of the Opinion of the said decision of the Maryland Court of Appeals rendered June 12th, 1953.

QUESTIONS PRESENTED

Both issues presented in this Petition are of first impression and are another facet of the law of divisible divorce.

FIRST: Was procedural due process of law granted by the Court of Appeals of Maryland when it undertook to decide, without remand, the effect of the Florida decree — a point not dealt with in the Court below, when the face of the decree shows it depends upon another instrument? Procedural due process is, of course, guaranteed by the 14th Amendment to the Federal Constitution.

SECOND: Was the wife entitled, by virtue of Article IV, Section 1 of the Federal Constitution, to have a Maryland decree of support enforced in Maryland where, subsequent to the Maryland decree, the Florida Court divorced the husband a vinculo, but decreed that the decree of the Maryland Court was res adjudicata and continuing in effect and, that Florida was precluded to pass further upon the question of alimony due to the wife as permitted by the Florida law when granting a husband a divorce from the wife?

SPECIFICATIONS OF ERRORS TO BE URGED

1. That the Maryland Court of Appeals erred in refusing to give full faith and credit to so much of the Florida decree as determined that the earlier Maryland decree was res adjudicata on the question of support, and, hence, unaffected by the Florida decree.

2. That the Maryland Court of Appeals erred in construing the Florida decree without reference to the law of that state and solely as though it had been entered by a Maryland Court pursuant to its law.

3. That the Maryland Court of Appeals erred when it refused to construe and apply the Florida decree pursuant to the law of that state.

4. That the Maryland Court of Appeals erred and failed to accord Petitioner's due process of law when it failed to remand the case for further proceedings to determine the effect of the Florida decree pursuant to the law of that state and of the decree itself.

REASONS FOR GRANTING WRIT

The result of the first three errors assigned above is a denial of the wife's right under the full faith and credit clause, while the fourth error assigned, results in a denial of the wife's rights of procedural due process of law; and hence, her federal rights have been denied and require the protection of this Court.

For these reasons, your Petitioner prays that this Honorable Court grant a Writ of Certiorari to the Court of Appeals of Maryland to the end that its decision filed June 12th, 1953, in case No. 167 of October, 1952 Term, be re-

viewed by this Honorable Court; and that your Petitioner may have such other and further relief as this Court may deem proper.

Respectfully submitted,

KARL F. STEINMANN,

PAUL R. KACH,

MANNES F. GREENBERG,

Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

In deference to the time of the Court, this Brief will err on the side of brevity. It would be presumptuous to set forth the legal principles involved in divisible divorce, or to attempt to reconcile the conflicting opinions of the several pertinent cases, but it is urged that this case affords an excellent opportunity for this Court to deal with an important facet of that law.

The pattern here is the familiar one of a very wealthy husband determined upon a divorce, engaging in a sort of cross-country tour, against a relatively penurious wife.

The jurisdiction would seem to be clear from a statement of the facts and the issues. Maryland granted to the wife a partial divorce in 1948 and allowed her alimony. In 1950, Florida granted an absolute divorce to the husband, notwithstanding the wife's plea that an absolute divorce was foreclosed by the decision of the Maryland Court in 1948. But the Florida Court went on further and determined that on the issue of support to the wife, the Maryland decree was binding upon it and res adjudicata. Had that Court decided otherwise, its law would have permitted alimony to any divorced wife not guilty of adultery. (Florida Statutes, F. S. A., Section 65.08; Randolph v. Randolph, 146 Fla. 491, 1 So. 2d 480.)

This Court denied certiorari to review the Florida decree, hence, on the beginning date of these proceedings (4th of August, 1952) the situation was as follows, chronologically:

November 18th, 1948, a decree of the Maryland Court to the wife for support and maintenance.

January, 1950, a decree of the Florida Court divorcing a vinculo the husband but declaring that the Maryland decree for support and maintenance was res adjudicata and hence was not affected by its decree.

June 12th, 1953, the Maryland Court of Appeals decided that *under the Maryland law* a decree of support and maintenance did not survive a decree of absolute divorce, therefore, the determination of the Florida Court that the decree of 1948 was on that point still in effect was an effort to confer *a new jurisdiction* on the Maryland Court, and, hence void.

The issue of procedural due process is equally simple to state chronologically:

On the 4th of August, 1952, the husband, largely in reliance on the earlier opinion of the Court of Appeals in Johnson v. Johnson, filed February 13, 1952, ... Md. ...., 86 Atl. 2nd 520, by seeking a release of the securities, put in issue indirectly the Florida decree. The lower Court held that the effect of the Florida decree was not properly before it, on the petition as filed, and dismissed the husband's Petition.

The husband appealed, and when the matter returned to the Court of Appeals of Maryland, it reiterated and reaffirmed its previous opinion that the effect of the Florida decree was to be determined *by Maryland law* and, notwithstanding no decision had been made of the point below and petitioner's brief in the Court of Appeals specifically set forth this fact and the need of further proceedings in the lower court did the Court of Appeals not accept the view of the lower court that the petition filed by the husband had not yet raised the question of the proper construction of the several decrees, failed to remand the case

for such inquiry and determination. Its reason therefor was its opinion that the Maryland decisions terminated alimony once a decree a vinculo was entered, and that this result could not be avoided by anything that Florida may have thought or determined. This ruling therefore failed both to give full faith and credit to a Florida decree, and further failed to give petitioner the due process of law likewise guaranteed to her by the Federal Constitution.

The Master's report is an indispensable part of the decree and the Maryland Court of Appeals denies the wife her full day in Court when it undertakes to pass upon the federal question involved in the decree with less than the full decree before it.

It was, it is submitted, error for the Court of Appeals of Maryland to construe a Florida decree in terms of the Maryland law and the effect of a similar Maryland decree.

Section 1738 of Title 28, U. S. C. A. states,

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved, or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

"It (full faith and credit) ordered submission by one state, even to hostile policies reflected in the judgment of another state. * * *" Estin v. Estin, 334 U. S. 551, 546, 91 L. Ed. 1561, 1567. To the same effect: Fauntleroy v. Lum, 210 U. S. 230, 52 L. Ed. 1039.

There were these possible decisions open to the Maryland Court:

1. That the Maryland decree for support remains in full force and effect and is res adjudicata as was the finding of the Florida Court, or

2. That Florida, by its supplemental decree made the Maryland decree for support part of its own decree, or

3. That when Florida adjudicated that the Maryland decree for support and maintenance was res adjudicata, its decree properly interpreted meant that the Maryland decree for support remained in existence and that the supplemental decree, which implemented it, not only kept the Maryland decree for support in existence, but also made the Maryland decree on that point part of the Florida decree, enforceable in either state, or

4. As decided by the Maryland Court, that the supplemental decree was utterly void in Maryland as beyond the power of the Florida Court, notwithstanding it is conceded the Florida Court had jurisdiction over the parties and the subject matter.

We take it to be clear that the basis for a petition for certiorari is to show a litigable issue. We further take it to be clear that certiorari should be granted in all cases where the decision on the principal case will be in the in-

terest of uniformity of law and judicial process without regard whether the ultimate resolution will be for the Petitioner or against.

We urge that certiorari should be granted in this case as a step forward in uniformity of divorce proceedings and as a step to clarify the law, which is certainly not now clear. Estin v. Estin, supra; Sherrer v. Sherrer, 334 U. S. 343, 92 L. Ed. 1429; Lynn v. Lynn, 302 N. Y. 193, 97 N. E. 2nd 748.

If, as the wife contends, this Court shall hold that even where a full appearance is made in a second State where divorce proceedings are in process, that that Court may declare itself bound as res adjudicata by findings of the first State on clearly divisible facts of a prior divorce decree, and that such declaration is entitled to full faith and credit in all the States, much competition among the states and confusion in the law will be eliminated.

If, on the other hand, this Court is of the opinion that nothing short of an affirmative decision, by a specific decree of the Court of the second State can determine the wife's support and maintenance, it has the opportunity to here say so, and allay the existing uncertainty.

If, in the further alternative, this court is of the opinion that in no case can the Court of the forum fix the property rights of the parties in the State of the matrimonial domicile and where the husband has property, then this case affords opportunity to so declare.

The above are outlined as public policy questions involved. This is not submitted as a Brief on behalf of the wife on the ultimate merits. If certiorari is granted, the wife will contend:

1. That Maryland, having decreed to her a partial divorce with support, and subsequently Florida having granted the husband an absolute divorce but decreed that the support and maintenance provisions of the Maryland decree was res adjudicata and remained in effect, that the Full Faith and Credit Clause, properly interpreted, keeps in full effect so much of the Maryland decree as granted support and maintenance.

2. That the decision of the Maryland Court that the Florida decree shall be interpreted *by Maryland Law* and made unnecessary a study of that decree *in the light of Florida Law* denied to her her day in court, and, hence, was violative of due process of law as guaranteed under the 14th Amendment of the Constitution. (Saunders v. Shaw, 244 U. S. 317, 61 L. Ed. 1163.)

It is therefore submitted that the Writ of Certiorari, as prayed, should be granted.

Respectfully submitted,

KARL F. STEINMANN,

PAUL R. KACH,

MANNES F. GREENBERG,

Attorneys for Petitioner.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR THE RESPONDENT IN OPPOSITION

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The Daily Record Co., Baltimore 3, Md.

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OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported in 97 A. 2d 330 and is printed in the transcript of record filed herein at p. 43. The legal question adjudicated by the Court of Appeals was also discussed in an earlier appeal between the parties which will be found reported in *Johnson v. Johnson*, 86 A. 2d 520. The decree of the Florida court dissolving the marriage was appealed to the Supreme Court of Florida and affirmed by that court (without opinion), *Johnson v. Johnson*, 49 So. (2d) 341. Petitioner

applied for certiorari to this Court to review the decision of the Supreme Court of Florida and her application was denied on March 3, 1952, *Johnson v. Johnson*, 342 U. S. 941.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, Section 1257 (3) USCA upon the alleged grounds that the Court of Appeals of Maryland refused to give full faith and credit to a decree of the Supreme Court of Florida and that the petitioner was denied due process of law under the 14th Amendment to the Constitution. We expect to show that both of the alleged jurisdictional grounds are without substance; that this appeal presents no federal question and, that the Court ought, therefore, to deny the petitioner's application.

QUESTION PRESENTED

The respondent urges that the case presents no question properly reviewable on certiorari by the Supreme Court of the United States. The sole question raised, argued and adjudicated by the Maryland Court of Appeals was whether under the law of Maryland, alimony awarded a wife in this state incident to a divorce a mensa, could survive a final decree of divorce awarded the husband by a Florida court. There is no question here of the application of the "divisible divorce" rule since the wife voluntarily submitted herself to the jurisdiction of the Florida court and contested the proceedings in person and through counsel Cf. *Estin v. Estin*, 334 U. S. 541. The only question in the case is whether the state's court of last resort has the right to declare what is the existing law of the State of Maryland.

STATEMENT

Petitioner was granted an a mensa divorce and alimony on the ground of desertion by a local Baltimore court in November, 1948. The decree enjoined the respondent (husband), a non resident, from disposing of property owned by him in Maryland in order to secure the payment of alimony. The injunction was later dissolved upon the husband's depositing certain of his stock holdings with the court as security. Subsequent to the a mensa divorce decree, on January 18, 1950, respondent was granted an a vinculo divorce in Florida on the ground of cruelty. The Florida divorce proceedings were contested by the petitioner, who appeared voluntarily in person and through counsel (R. 44). The judgment of the Florida court was affirmed without opinion on appeal to the Supreme Court of Florida (*Johnson v. Johnson*, 49 So. (2d) 341) and an application for certiorari to the Supreme Court of the United States to review the judgment was denied on March 3, 1952, 342, U. S. 941. When respondent's divorce had become final, he petitioned the Baltimore court to obtain a release of his stock upon the ground that since the marriage had been dissolved by the Florida a vinculo decree, the Maryland court had no longer any jurisdiction to enforce its alimony award (R. 7). The Chancellor declined to decide whether the alimony award was still in effect, but ordered that the stock continue to be held as security (R. 40). Upon appeal to the Court of Appeals of Maryland, the judgment was reversed. The Court holding that under the long established law of Maryland, an award of alimony as incident to an a mensa divorce could not survive a dissolution of the marriage by a decree of absolute divorce (R. 43).

Respondent excepts to the following statements in petitioner's "Statement of the Matter Involved", (Petitioner's brief pp. 3, 4, 5) on the ground that there is no record reference to support the statements and that they represent but a strained attempt to lend color to petitioner's claim that there is some sort of federal question involved in her application:

(1) "On January 18, 1950, the Circuit Court for Dade County, Florida decreed:

1. That the Maryland decree was res adjudicata so far as it related to the rights of the wife to support and maintenance", (Petitioner's brief p. 3).

There is no record reference to support this statement and the decree of the Circuit Court for Dade County, Florida on its face refutes the statement (R. 14, 15).

(2) The statement that the Supplemental Decree of the Florida Court "implemented its finding of res adjudicata" (petitioner's brief p. 4).

Since the original decree made no finding of res adjudicata, the supplemental decree obviously did not implement it (R. 14, 15).

(3) The statement that the wife's answer set forth, "among other things, that the Florida decree sustained the Maryland decree in so far as support was concerned and determined said decree on that point was res adjudicata in Florida, * * *", (petitioner's brief p. 5). The wife's answer raised no such issue (R. 10, 12, 13).

(4) The statement that the concurring Judges' opinion stated that the earlier case (*Johnson v. Johnson*, 86 A. 2d 520) was "improperly decided" (petitioner's brief p. 6).

Reference to the concurring Judges' opinion will show that far from thinking the case was "improperly decided" these Judges recognized that under Maryland law the case could not have been decided otherwise (R. 48).

ARGUMENT

I.

No Federal questions were presented or decided in the Court below

It is clear from the Maryland court's opinion (R. 43) that no federal question was presented to or decided by that court. The question of giving "full faith and credit" to the decree of the Florida court, while mentioned in petitioner's answer in the lower court, was not treated as being in issue either in the lower court or before the Court of Appeals. It was never argued by counsel or discussed in the court's opinion. In fact, counsel for the petitioner in their brief filed with the Court of Appeals expressly stated that no federal questions were in issue on the appeal and that they would not be argued. Thus petitioner's counsel in their brief stated (Appellee's Brief, Court of Appeals of Maryland, October Term, 1952, No. 167, pp. 1, 2):

> "That petition (referring to respondent's petition to obtain a release of his stock), and it alone is what the Court below denied, and that action is the sole issue of this appeal. Other points made by appellant (respondent here) in his brief may or may not be properly brought before this Court in subsequent litigation, but only after they have first been litigated in and decided by the Court below. Their decision will then involve, among other things, the question of whether the Supplemental Decree of the Florida Court is not entitled

to 'full faith and credit' in Maryland pursuant to Section I of Article IV of the Constitution of the United States."

and again (pp. 3, 4):

"Hereafter, in future litigation following the possible presentation of other issues than that now offered by appellant (respondent here) in the Court below, appellee (petitioner here) may have to present her views in support of the position that is set forth in paragraphs '5' and '6' of her answer * * * but that (as the opinion and decree below make self-evident) is not an issue on this appeal. * * * In such future litigation, the federal question hereinbefore mentioned may also become pertinent."

It is seen, therefore, that the constitutional questions now relied upon by the petitioner to invoke the jurisdiction of this Court were never treated as being in issue, were never argued by counsel or considered or decided by the Maryland Court of Appeals, — nor were they at all essential to that court's decision.

The decision of the Maryland Court of Appeals adjudicated no federal question. On the contrary, the court decided a question solely of Maryland law. The Court held that under the long settled law of the State of Maryland, an award of alimony to a wife as part of a separation decree could not survive the dissolution of the marriage by a subsequent decree of absolute divorce awarded the husband by the State of Florida. In so deciding, the Maryland court gave full faith and credit to the decree of the Florida court dissolving the marriage and declared the law of Maryland as it had been established in its earlier decisions. *Tabeling v. Tabeling*, 157 Md. 429, 146 A. 289; *Staub v. Staub*, 170 Md.

202, 183 A. 605; *Tome v. Tome,* 180 Md. 31, 22 A. 2d 549; *Johnson v. Johnson,* 86 A. 2d 520.

It is well settled that the federal right relied upon as conferring jurisdiction on this Court must have been set up and adjudicated against the petitioner by the judgment of the state court, and it is equally well settled that the contention made and passed upon in the state court cannot be enlarged by assignments of error made to bring the case to the Supreme Court. And a general statement that the decision of a court is against the constitutional rights of the objecting party, or against the 14th amendment (Petitioner's brief p. 2), or that it is without due process of law, will not suffice to raise a federal question. *Cleveland RR Company v. Cleveland,* 235 U. S. 50; *Hamblin v. Western Land Company,* 147 U. S. 531; *Montana v. Rice,* 204 U. S. 291; *Minnesota v. National Tea Company,* 309 U. S. 551; *Lynch v. New York,* ex rel Pierson 293 U. S. 52; *Whitney v. California,* 274 U. S. 357; *Wilson v. Cook,* 327 U. S. 474.

The jurisdictional requirements of Section 1257 (3) Title 28 USCA have not been met by the petitioner and the petition for certiorari should therefore be dismissed. As stated by this court in *Mellon v. O'Neil,* 275 U. S. 312:

> "it is not enough that there may be somewhere hidden in the record a question which if it had been raised would have been of a federal nature, *Dewey v. Des Moines,* 173 U. S. 193, 199, 43 L. Ed. 665, 666, 19 Sup. Ct. Rep. 379; *Wilson v. Cook,* 327 U. S. 474; *Keokuk & H. Bridge Co. v. Illinois,* 175 U. S. 626, 634, 44 L. Ed. 299, 302, 20 Sup. Ct. Rep. 205; *Whitney v. California,* supra."

Some point is made in petitioner's brief of the fact that two judges of the Maryland Court of Appeals, while con-

curring in the decision of the court, filed a separate concurring opinion (petitioner's brief p. 6). An examination of the concurring opinion will, however, disclose that it recognizes the law of Maryland to be settled as declared in the Court's opinion and that the concurring opinion consists in the main of an argument addressed to the legislature advocating a change in the existing law of this state. With this argument we are not here concerned because it is conceded by all, including the opinion of the two concurring judges, that the law of Maryland is as declared by the court below. This was well stated by the Court of Appeals in the earlier appeal between the parties, Cf. *Johnson v. Johnson*, 86 A. 2d 520, 524:

> "We now face the question whether, under Maryland law, the Maryland court is authorized to exercise jurisdiction, by changing or by enforcing, with or without change, the allowances in the decree of November 15, 1948. The answer is, no. The authorities are in conflict in different jurisdictions. *Staub v. Staub*, 170 Md. 202, 204-212, 183 A. 605. In Maryland the court has no authority to make, change or enforce provision for payment by a former husband to his former wife of alimony (except reserved, expressly or by implication, to modify provision for alimony in a decree for divorce a vinculo) or 'suit money'. *Tabeling v. Tabeling*, 157 Md. 429, 146 A. 389; *Staub v. Staub*, supra; *Tome v. Tome*, 187 Md. 31, 22 A. 2d 549. It is immaterial whether the marriage relation was terminated by death, *McCurley v. McCurley*, 60 Md. 185, by a Maryland divorce, *Tabeling v. Tabeling*, *Tome v. Tome*, or by a divorce in another state, *Staub v. Staub*. It is likewise immaterial to distinguish on the facts the instant case from the cases just cited or from any cases which have arisen under the full faith and credit clause. *The question is not a constitutional question, but a question of Maryland law.* If Maryland is to enter into competition with other states to occupy as

much 'divisible divorce' jurisdiction as possible under *Estin v. Estin*, 334 U. S. 541, 68 So. Ct. 1213, 92 L. Ed. 1561, *the Maryland legislature must first change the Maryland law*, so that power to make and change maintenance and expense allowances shall survive divorce. If Justices Frankfurter and Jackson are right, this change must be made with respect to Maryland divorces as well as divorces granted in other states, *Estin v. Estin*, supra, 334 U. S. 550, 554, 68 S. Ct. 1213." (Italics supplied.)

II.

There was no denial of full faith and credit to the Florida decree

The Maryland Court obviously did give full faith and credit to the Florida decree awarding respondent a divorce and dissolving the marriage status of the parties. The petitioner is contending, however, that the Florida decree did more than dissolve the marriage. It is argued that the Florida decree also provided an award of alimony to the petitioner and that in refusing to enforce the payment of alimony, the Maryland court is denying full faith and credit to the Florida decree. The fallacy of the petitioner's contention here is that the Florida decree did not make any award of alimony to the petitioner. At no stage in the Florida divorce proceedings did the petitioner ever request the court for an award of alimony, and since the jurisdiction of the Florida court was never invoked for this purpose, the decree contained no award of alimony. Some two weeks after the final decree of divorce in Florida the petitioner filed a motion for "a Decree supplementing the Final Decree of Divorce heretofor entered herein on the 18th day of January, 1950 determining the question of the effect, if any, of said Final Decree upon certain support and maintenance obligations of the plaintiff herein to the defendant

and the minor child of the parties pursuant to a Decree entered by the Circuit Court No. 2, City of Baltimore, State of Maryland on November 15th, 1948 in the case of Mary B. Johnson v. James Nelson Johnson, et als, which Decree has been introduced in evidence herein as a part of plaintiff's Exhibit No. 3", (R. 17). On February 21st, 1950 the Florida court ordered that its Final Decree of Divorce be supplemented by adding thereto a new paragraph as follows:

> "(6) That nothing in this decree shall be held or construed to relieve the plaintiff in any manner from complying with the support and maintenance provisions of that certain decree rendered by the Circuit Court No. 2 of Baltimore City, State of Maryland, on the 15th day of November, 1948, in the case of Mary B. Johnson, Plaintiff v. James Nelson Johnson, et als, Defendants, exemplified copy of which decree has been introduced herein as a part of Plaintiff's Exhibit No. 3" (R. 16).

Petitioner now contends (1) that this added provision of the Florida decree was, in effect, an award of alimony, or (2) if it did not amount to an award of alimony it, in some vague, undefined manner, continued in effect the support provision of the Maryland decree. As to the first contention, it should be sufficient to say that the language of the supplemental decree is clearly not an award of alimony by the Florida court, but a mere declaration that the court's decree was not to be construed as interfering with the support provisions of the earlier decree of Circuit Court No. 2. To interpret the supplemental decree as an award of alimony by the Florida court when the petitioner had made no claim for alimony in the divorce proceedings, or in her motion for a supplementary decree, would call for a plain distortion of the language of that decree. Peti-

tioner's motion and the declaration of the Florida court's supplemental decree were obviously predicated upon the assumption that under Maryland law the support provisions of the earlier a mensa decree could survive the dissolution of the marriage. This was an assumption which the Maryland Court of Appeals, interpreting the law of this state, has declared was unfounded. Cf. *Johnson v. Johnson*, 86 A. 2d 520; *Johnson v. Johnson*, 97 A. 2d 330 (R. 43).

As to the second contention, we can answer this no better than by directing the court's attention to the fact that the same argument was advanced by the petitioner in the earlier appeal to the Court of Appeals of Maryland in the case of *Johnson v. Johnson*, 86 A. 2d 520, and convincingly rejected by Judge Markell, speaking for the court. In that case Judge Markell said (p. 523):

> "At the argument both the construction and the validity and effect of paragraph (6) of the Florida decree were much discussed. The right and duty to examine the jurisdiction of the court on a question of res adjudicata exists with respect to all or any part of a decree in question. An invalid provision in an otherwise valid decree neither invalidates the valid part of the decree nor is itself validated by being included in an otherwise valid decree. If a Florida decree should provide (1) that H be divorced a vinculo from W because of cruelty, and (2) that W be imprisoned in the Baltimore jail for thirty days, the second provision would neither invalidate the first nor be validated by the first. Likewise the same provision may be valid as to part of the subject matter or in some circumstances but invalid as to other parts of the subject matter or in other circumstances. If the Maryland court actually possesses any of the jurisdiction which seems to be reserved to it in the Florida decree, obviously neither the Florida decree nor the full faith and credit clause prevents the Maryland court from exercising such

jurisdiction. If, however, under Maryland law the Maryland court has no authority to act as permitted under the Florida decree, then obviously the Florida court has no power to confer jurisdiction upon the Maryland court, and the Maryland court has no right or duty, under the full faith and credit clause or otherwise, to exercise such jurisdiction.

"The construction of the Florida decree is by no means clear. We are not persuaded that plaintiff is right in her contention that 'support and maintenance provisions' of the Maryland decree include a 'provision' (non-existent unless by implication from Maryland law) that the specific 'maintenance provisions' in the Maryland decree are subject to change from time to time by the Maryland court by increase or decrease of the amounts allowed. However, it is preferable, if possible, that the Florida court, and not this court, construe its decree."

It is clear, therefore, that the requirements of the Federal Constitution, Article 4, Paragraph 1, were fully complied with and full faith and credit was accorded the Florida decree.

III.

There was no denial of due process of law to the Petitioner

On this point again petitioner bases her argument upon the false assumption that the Florida court awarded her alimony. As we have shown above, it did not. The Maryland Court of Appeals was not dealing with a case in which an award of alimony by the Florida court was sought to be enforced in Maryland and it expressly reserved opinion on such a case, saying (R. 45, 46):

"* * * our decision (*Johnson v. Johnson*, 86 A. 2d 520) was rested squarely on the proposition that the alimony provision could not, under Maryland law,

survive the dissolution of the marriage by the Florida court. The dissolution was not conditional upon the validity or effectiveness of the supplemental decree. That decree was obviously based on the erroneous assumption that the obligation to pay alimony in Maryland would survive a dissolution of the marriage in Florida. Under the laws of some states the obligation would survive, but we have held otherwise. *Johnson v. Johnson*, supra; *Staub v. Staub*, supra. On that question the Maryland law must control, despite the declaration of the Florida court disavowing any intention to relieve the plaintiff from his obligations under the Maryland decree. It may be noted that the supplemental decree did not purport to impose an obligation to pay alimony in Florida, where it was not asked for. It may well be that the Florida court had, and may still have, authority to award alimony in its own right. Cf. *Roseman v. Roseman*, (Fla.) 21 So. (2d) 215. We leave open the question whether, if alimony were awarded in Florida the decree would be enforceable here. Cf. *Rosenberg v. Rosenberg*, 152 Md. 49."

Indeed the petitioner's brief does little more than make the bare allegation that she was denied due process. The brief makes no serious attempt to argue the proposition and cites no authorities in support of it. We think it unnecessary to burden this court further with discussing a point which seems to us wholly lacking in merit.

CONCLUSION

The case involved no more than an interpretation of the law of Maryland by the State's court of last resort. No federal questions are presented and we respectfully submit that the Petition for Writ of Certiorari should be denied.

WILFRED T. MCQUAID,
Solicitor for Respondent.

October, 1953.